



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 10**

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REGIONAL  
ADMINISTRATOR'S  
DIVISION

July 27, 2022

Kimberly D. Bose, Secretary  
Federal Energy Regulatory Commission  
888 First Street NE, Room 1A  
Washington, DC 20426

Dear Kimberly Bose:

The U.S. Environmental Protection Agency has reviewed the Federal Energy Regulatory Commission's June 2022 Notice of Intent to File License Application for the Cat Creek Energy and Water Storage Project (EPA Project Number 22-0036-FERC). EPA has conducted its review pursuant to the National Environmental Policy Act and its authority under Section 309 of the Clean Air Act. The CAA Section 309 role is unique to EPA and requires EPA to review and comment publicly on any proposed federal action subject to NEPA's environmental impact statement requirement.

The NOI evaluates the potential environmental impacts associated with a proposal to generate power by cycling water back and forth between Anderson Ranch reservoir and a new upper reservoir. Water is stored and released for the benefit of downstream users in the Boise River Basin, generating power en route. The project area includes the Anderson Ranch Reservoir, private lands adjacent to the reservoir and federal lands owned and/or administered by the Bureau of Reclamation, the U.S. Forest Service, and the Bureau of Land Management. The NOI states that the NEPA document will consider at minimum a no-action alternative, a proposed action, and alternatives to the proposed action.

EPA appreciates the information provided in the NOI. EPA offers FERC the enclosed comments on Scoping Document 1. EPA is particularly concerned about the proposed project's impact on water quality and provides recommendations we believe are important to consider in this project's NEPA analysis.

Thank you for the opportunity to provide scoping comments for this project. If you have questions about this review, please contact Emily Bitalac of my staff at (206) 553-2581 and [bitalac.emily@epa.gov](mailto:bitalac.emily@epa.gov), or me, at (206) 553-1774 or at [chu.rebecca@epa.gov](mailto:chu.rebecca@epa.gov).

Sincerely,

Rebecca Chu, Chief  
Policy and Environmental Review Branch

Enclosure

**U.S. EPA Detailed Comments on the  
Cat Creek Energy and Water Storage Project NOI  
Elmore County, Idaho  
July 2022**

**Water Resource Impacts**

To fully characterize the impacts to water quality that may result from this project, EPA recommends the NEPA document describe the current conditions of the area (i.e., acreage of wetlands, ditched and natural streams, Clean Water Act Section 303(d) listed waters, Total Maximum Daily Load plans, etc.).

EPA recommends the NEPA document characterize the direct, indirect, and cumulative impacts that each of the proposed alternatives will have on the current conditions and how each of the alternatives account for and mitigate impacts. EPA recommends that the NEPA analysis also clearly explain how the project fits into broader goals and efforts related to watershed management and water conservation in the area.

Construction activities of the proposed project may be subject to regulatory requirements and require permitting, such as Clean Water Act Sections 401, 402, and 404 permits.

***Clean Water Act Section 401***

The CWA provides states and authorized tribes the authority to grant, deny, or waive certification of proposed federal licenses or permits that may discharge into waters of the U.S. This section of the CWA is an important tool for states and authorized tribes to help protect the water quality of federally regulated waters within their borders, in collaboration with federal agencies. In developing the NEPA document, EPA recommends early coordination with the State of Idaho, tribes that have treatment in a similar manner as a state and CWA 401 authority for the purposes of streamlining regulatory processes.

***Clean Water Act Section 402***

EPA recommends the NEPA document identify any discharges to waters of the U.S. that are known, or are likely, to occur during construction and operation of the project and how these discharges will be managed and minimized. Identify the NPDES permits that will be obtained for the construction phase, new (or modifications to) existing permits for operations, and how any previous permit exceedances could be prevented by incorporating pollution prevention measures into the project. Describe any site-specific best management practices (BMPs) or stormwater pollution prevention plans that will be used during construction to minimize those impacts. Examples of BMP measures to include are: physical measures like silt fencing; timing and sequencing restrictions; setback provisions from existing streams, riparian areas, or wetlands; equipment decontamination; and/or invasive species management.

***Clean Water Act Section 404***

The proposed project may require a permit under Section 404 of the CWA from the U.S. Army Corps of Engineers for the discharge of dredged or fill material into waters of the U.S. Wetlands, vegetated shallows, mud flats and cobble substrates are all considered special aquatic sites under the CWA Section 404(b)(1) Guidelines (40 CFR 230).

EPA recommends that the NEPA document:

- Clearly identify any discharges to waters of the U.S. that are known, or likely, to occur that will be subject to Section 404 of the CWA. Identify and describe the impact of those discharges,

control measures to be employed to address those impacts, and BMPs to prevent discharge of water and pollutants.

- Includes sufficient information that can serve as a basis to determine whether the project would satisfy the requirements for the Section 404 permit or identify appropriate measures to mitigate the project's impacts to all waters of the U.S.
- Structure the alternatives analysis so that it is consistent with meeting requirements of both the CWA and NEPA.
- Describe the regulatory criteria and processes utilized to screen potential alternatives and thoroughly evaluate alternatives that would pose less adverse impacts.
- Describe how compensatory mitigation will be quantified and provided to offset impacts, with specific project examples and options as available.

### ***Aquatic Habitat***

EPA recommends the NEPA document describe aquatic habitats in the affected environment (e.g., habitat type, plant and animal species, functional values, and integrity) and the environmental consequences of the proposed action on these resources. Evaluate impacts to aquatic resources in terms of the impacted acreage and by functions performed. Project construction, operation, and maintenance may affect a variety of aquatic resources. The project has potential to degrade habitat for fish and other aquatic biota, and these resources may experience varying degrees of impacts and alteration of their hydrologic functions. For any impacts that cannot be avoided through siting and design, describe the types, location, and estimated effectiveness of BMPs applied to minimize and mitigate impacts to aquatic resources.

### **Wildlife Impacts**

EPA recommends conducting surveys in the project area as part of the impact analysis to identify invertebrate species, flora, and other wildlife present in the project area. Idaho Department of Fish and Wildlife, conservation groups, and tribal governments may have existing information and resources to support this survey.

EPA recommends the NEPA document analyze the impact of the proposed water withdrawals for filling and maintaining the reservoirs for this project on wildlife, including fish. Include in this analysis identification of any Endangered Species Act species and/or critical habitat. EPA recommends consulting with U.S. Fish and Wildlife Service, National Marine Fisheries Service, and Idaho Department of Fish and Wildlife where there are potential project impacts to federal or state listed species or habitat impacts.

As the proposed reservoirs have potential to attract wildlife (e.g., avian species) consider surrounding hazards that may impact these species. EPA recommends the NEPA document assess this potential risk and include a detailed management strategy to address these issues in the alternatives analysis.

### **Air Quality**

EPA recommends the NEPA document include a discussion of ambient air conditions (baseline or existing), National Ambient Air Quality Standards and nonattainment areas, and potential air quality impacts of the proposed project for each alternative. In estimating criteria pollutant emissions for the analysis area, discuss the timeframe for release of these emissions through the license lifespan of the proposed project.

To minimize the environmental impacts of construction related work, EPA recommends the NEPA document identify actions to minimize the impacts to local air quality, especially any fugitive dust and diesel emissions. At a minimum, EPA recommends the NEPA document include a discussion of the following information about the surrounding airshed:

- Any adverse impact on air-quality-related values in a federal Class I area or state wilderness area that may result from this project.
- Annual emissions greater than the basic Prevention of Significant Deterioration emission thresholds that currently exist in the project area.
- Any violation of state or federal ambient air quality standards that may result from this project.
- Interference with the maintenance or attainment of state or federal ambient air quality standards in the analysis area that may result from this project.
- Increases in the frequency or severity of existing violations of state or federal ambient air quality standard in the analysis area.
- Exposure of nearby populations to increased levels of diesel particulate matter and other air toxics, especially during construction phases which might utilize heavy equipment.
- Delays in the timely attainment of standard, interim emission reduction, or other air quality milestone promulgated by the EPA or state air quality agency, or exposure of sensitive receptors to substantial pollutant concentrations.
- Consider potential mitigation measures for construction equipment and fugitive dust that may lessen the severity of the air impacts on the local environment.

### **Impacts of Climate Change**

EPA recommends the NEPA document consider ongoing and projected regional and local climate change and ensure robust climate resilience/adaption planning in the project design. Ongoing and projected regional and local climate impacts include, but are not limited to, drought, high intensity precipitation events, at-risk areas not yet designated as flood zones, and increased fire risk.

Consideration of these impacts could help avoid infrastructure investments in vulnerable locations, and unintended impacts on local communities. Also consider relevant state, tribal, or local adaptation plans.

EPA also recommends the NEPA document include measures to ensure resilience/adaptation to protect the infrastructure investment from the effects of climate change (on the project). The long-lived nature of infrastructure makes consideration of the ongoing and projected impacts of climate change even more important. It is not sufficient to ensure resilience of the project to risks under current climate conditions only. Considering potential climate change impacts helps ensure that investments made today continue to function and provide benefits, even as climate conditions change.

### **Coordination with Tribal Governments**

EPA encourages FERC to consult with and incorporate feedback from the Tribes when making decisions regarding the project. EPA recommends the NEPA document describe the issues raised during the consultations and how those issues were addressed, consistent with Executive Order 13175, *Consultation and Coordination with Indian Tribal Governments*.

### **Environmental Justice**

Executive Order 12898 directs federal agencies to identify and address the disproportionately high and adverse human health effects of federal actions on minority and low-income populations, to the greatest extent practicable and permitted by law. EO 13985 on *Advancing Racial Equity and Support for*

*Underserved Communities Through the Federal Government* should also be incorporated into FERC's analysis because it includes a modern definition of equity that clarifies a broader approach.

Assessing EPA's Environmental Justice Screening and Mapping Tool (EJScreen) information is a useful first step in understanding locations that may be candidates for further review or outreach.<sup>1</sup> EPA considers a project to be in an area of potential environmental justice (EJ) concern when an EJScreen analysis for the impacted area shows one or more of the eleven EJ Indexes at or above the 80<sup>th</sup> percentile in the nation and/or state. At a minimum, EPA recommends an EJScreen analysis consider EJScreen information for the block group(s) that contains the proposed action(s) and a one-mile radius around those block groups.

It is important to consider all areas impacted by the proposed action(s). Areas of impact can be a single block group or span across several block groups and communities.<sup>2</sup> When assessing large geographic areas, consider the individual block groups within the project area in addition to an area-wide assessment. Important caveats and uncertainties apply to this screening-level information, so it is essential to understand the limitations on appropriate interpretations and applications of these indicators.<sup>3</sup> As the screening tool does not provide data on every environmental impact and demographic factor that may be relevant to a particular location and/or proposed project, consider additional information in an EJ analysis to supplement EJScreen outputs. Further review or outreach may be necessary for the proposed action(s). To address these potential concerns, EPA recommends:

- Applying methods from "Environmental Justice Interagency Working Group Promising Practices for EJ Methodologies in NEPA Reviews" report, or the Promising Practices Report, to this project.<sup>4</sup> The Promising Practices Report is a compilation of methodologies gleaned from current agency practices concerning the interface of EJ considerations through NEPA processes.
- Characterizing project site(s) with specific information or data related to EJ concerns.<sup>5</sup>
- Describing potential EJ concerns for all EJ Indexes at or above the 80th percentile in the state and/or nation.
- Describing block groups that contain the proposed action and at a minimum, a one-mile radius around those areas.
- Describing individual block groups within the project area in addition to an area-wide assessment.
- Supplementing data with county level reports and local knowledge.

### **Cumulative Impacts**

When analyzing the project, EPA recommends determining what the cumulative impacts of the proposed project will be on human health and the environment. Include an evaluation of the proposed project's impacts in the context of interacting with, and potentially exacerbating, the effects of other

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<sup>1</sup> <https://ejscreen.epa.gov/mapper/>.

<sup>2</sup> Agencies should define community as "either a group of individuals living in geographic proximity to one another, or a geographically dispersed set of individuals (such as migrant workers or Native Americans), where either type of group experiences common conditions" (Interim Justice40 Guidance – Executive Order 14008 on Tackling the Climate Crisis at Home and Abroad, January 27, 2021).

<sup>3</sup> <https://www.epa.gov/ejscreen/technical-documentation-ejscreen>.

<sup>4</sup> [https://www.epa.gov/sites/default/files/2016-08/documents/nepa\\_promising\\_practices\\_document\\_2016.pdf](https://www.epa.gov/sites/default/files/2016-08/documents/nepa_promising_practices_document_2016.pdf).

<sup>5</sup> For more information about potential EJ concerns, refer to the July 21, 2021 Memorandum for the Heads of Departments and Agencies Interim Implementation Guidance for the Justice40 Initiative. <https://www.whitehouse.gov/wp-content/uploads/2021/07/M-21-28.pdf>.

projects in proximity. (e.g., the timing of the work coinciding with other human or natural disturbances that are affecting the project area).

### **Monitoring**

As the proposed project has the potential to impact many environmental resources for an extended period, EPA recommends that the project be designed to include an environmental inspection and mitigation monitoring program to ensure compliance with and efficacy of mitigation measures. EPA recommends the NEPA document describe the monitoring program and how it will be used as an effective feedback mechanism so that the project can be adaptively managed over time, and any needed adjustments can be made to the project to meet environmental objectives throughout its lifespan.

### **Financial Assurance**

As local, regional, and national conditions fluctuate due to climate change, EPA suggests requiring financial assurance mechanisms in licenses and other authorizations to cover the costs of safety measures and project operation and maintenance, including specific adaptive management plans to contend with changing climatic conditions. EPA also suggests establishing a trust to assist licensees with preventing or responding to accidental catastrophic failures. Careful consideration of local impacts will ensure financial assurances for new and existing projects are considered when creating measures to incorporate climate resiliency planning and response mechanisms for infrastructure.